which the plaintiff is travelling may also have been guilty of some negligence contributing to the accident."

As far as I am aware, this common law principle is still good law.

In *Dingle* v. *Associated Newspapers Ltd.*[1] at page 188, Devlin L.J. said as follows:

"... where injury has been done to the plaintiff and the injury is indivisible, any tortfeasor whose act has been a proximate cause of the injury must compensate for the whole of it. As between the plaintiff and the defendant it is immaterial that there are others whose acts also have been a cause of the injury and it does not matter whether those others have or have not a good defence. These factors would be relevant in a claim between tortfeasors for contribution, but the plaintiff is not concerned with that; he can obtain judgment for total compensation from anyone whose act has been a cause of his injury. If there are more than one of such persons, it is immaterial to the plaintiff whether they are joint tortfeasors or not. If four men, acting severally and not in concert, strike the plaintiff one after another and as a result of his injuries he suffers shock and is detained in hospital and loses a month's wages, each wrongdoer is liable to compensate for the whole loss of earnings. If there were four distinct physical injuries, each man would be liable only for the consequences peculiar to the injury he inflicted, but in the example I have given the loss of earnings is one injury caused in part by all four defendants. It is essential for this purpose that the loss should be one and indivisible; whether it is so or not is a matter of law ..."

In the above circumstances, the defendants' application is dismissed with costs.

Order accordingly.

Solicitors: *Sri Ram, Zulkifly and Kumar; Jagjit Singh & Co.*

CHONG KHEE SANG v. PANG AH CHEE

[A.C.J. (Shankar J.) November 1, 1983]
[Johore Bahru – Civil Appeal No. 24 of 1981]

Evidence – Documentary evidence – Receipts tendered and marked as exhibits – Receipts not proved – Objection as to admissibility – Evidence Act 1950, ss. 56, 57 & 91 – Subordinate Court Rules 1950, O.19 r.8 – Subordinate Court (Amendment) Rules 1980, O.28 r.14.

Evidence – Agreed Bundle of Documents – Inclusion of document in Agreed Bundle – Effect of.

Evidence – Documentary evidence – Admissibility of – When to object.

Damages – Fatal accident – Assessment of damages – Civil Law Act, 1956, ss. 7 & 8.

Practice & Procedure – Documentary evidence – Duty of Counsel tendering documents.

On April 24, 1978 one Cheah Soi Moi ("the deceased") was killed when the motorcycle he was riding was knocked into by a motor car. On July 17, 1979 his mother commenced an action, suing the car driver as administratrix of the deceased's estate and in her own capacity as dependant, for damages under sections 7 & 8 of the Civil Law Act, 1956. In default of defence, an order was made precluding the defendant from defending the action. The case was set down for hearing for damages to be assessed.

Solicitors for both parties corresponded and were agreed on the contents of an Agreed Bundle but in the event, the plaintiff's solicitors failed to prepare and file the Agreed Bundle.

Plaintiff's counsel adverted to the oral and written consent of Defence Counsel to include the disputed receipts in the proposed Agreed Bundle. Defence Counsel qualified that his consent to include the receipts in the Agreed Bundle was not an admission that he accepted the payments as proved. The learned President, having already admitted the documents and marked them as and when they were tendered by the plaintiff in her examination-in-chief, ordered the case to proceed. No evidence was given by the plaintiff that she had disbursed the money for motorcycle repairs and funeral expenses nor did she call on the issuers of the receipts to prove the payments. The receipts were left to prove themselves.

In his assessment of damages the learned President granted $4,000/– for loss of life, of which $2,000/– went to the deceased's father and the remainder merged with the plaintiff's dependency claim. She was awarded $3,800/– under this head, future dependency of $7,920/– and special damages of $2,780/– being $2,000/– for funeral expenses, $400/– for repairs to motorcycle and $380/– for administrative and other expenses.

In his judgment, the learned President stated that to his own knowledge Chinese funerals were expensive and gave it as his opinion that $2,000/– for funeral expenses was fair and reasonable. He did not address his mind to the issue whether the expenses were proved.

The defendant appealed on the ground that the plaintiff had not proved her case.

Held: (1) a document does not become admissible in evidence merely because it has been handed to the adjudicating officer and marked as an exhibit;

(2) a document cannot be admitted into evidence and marked as such until it has been properly proved;

(3) a receipt is a document like any other and if it is to be proved as a document such proof must be given by its maker. In this case none of the receipts which the plaintiff tendered were properly proved. The plaintiff did not give evidence that she paid these monies, she did not witness payment of the monies, she did not call the people who had paid the monies, and she did not call the people who had received these monies;

(4) by not objecting to the admissibility of the documents when they were tendered in examination-in-chief but only during cross-examination, there was no waiver on

the facts of this case especially as it had only become apparent during cross-examination that the plaintiff had no first-hand knowledge of the contents of these documents;

(5) once a document is included in an Agreed Bundle, it is no longer necessary to prove their existence or execution. Nor is it necessary to produce the original. But so far as the contents of the documents are concerned, the truth of the same has still to be proved, in the absence of any specific admission of the facts therein contained.

(6) judicial notice can only be taken of certain facts as laid down by sections 56 and 57 of the Evidence Ordinance. A judge cannot import into the case his own knowledge of particulars facts without himself giving evidence as a witness. It was therefore not permissible for the learned President to take cognisance of the costs of Chinese funerals in his evaluation of damages;

(7) dependency loss was reduced to $75/- p.m. from the $100/- p.m. assessed by the learned President while the number of years purchase was reduced from 17 years to 7 years as the prospect of the deceased, a bachelor of 33 years, getting married was so much on the cards that the plaintiff could expect continued support for a further 7 years only at the very most;

(8) there would be judgment for the plaintiff for $960.72/- being $394/- for special damages, $4,000/- for loss of expectation of life, of which $2,000/- should be paid to the deceased's father, and $5207.72 general damages for loss of dependency.

Obiter dictum: "..... it is the duty of counsel engaged in a case to see that the documentary evidence upon which he relies is properly tendered in court and proved. After they have been proved he should see that when admitted into evidence the documents are properly marked as required by law".

Cases referred to:

(1) *Devaki Nair* v. *Sum Kum* [1964] M.L.J. 74.
(2) *Lee Sau Kong* v. *Leow Cheng Chiang* [1961] M.L.J. 17, 20.
(3) *Low Moh* v. *Public Prosecutor* [1954] M.L.J. 14.
(4) *Imam-Ud-Din* v. *Sri Ram Perbhu Dial* A.I.R. 1928 Lah. 142.
(5) *Secretary of State* v. *Sarla Devi* A.I.R. 1924 Lah. 548.
(6) *Feroze Din* v. *Nawab Khan* A.I.R. 1928 Lah. 432, 434.
(7) *Baldeo Sahai* v. *Ram Chander & Ors.* A.I.R. 1931 Lah. 546, 550.
(8) *Dato' Mokhtar Hashim & Anor.* v. *Public Prosecutor* [1983] 2 M.L.J. 232, 277.
(9) *Shahzadi Begam* v. *Secretary of State for India* 34 I.L.R. [1907] Calcutta 1059, 1073, 1074.
(10) *Mt. Channi Bibi* v. *Ahmad Khan* A.I.R. 1924 Lah. 265.
(11) *Jawala Singh* v. *Teja Singh* A.I.R. 1924 Lah. 273.
(12) *Ghulam Muhammad* v. *Kalim Ullah* A.I.R. 1928 Lah. 428.
(13) *Tay Kheng Hong* v. *Heap Moh* [1964] M.L.J. 87, 93.
(14) *Fazal Din* v. *Public Prosecutor* [1949] M.L.J. 71.
(15) *Henry Trading Co. Ltd.* v. *Harun* [1966] 2 M.L.J. 281.
(16) *Yap Choo Hoo* v. *Tahir bin Yasin* [1970] 2 M.L.J. 138.
(17) *Goh Ya Tian* v. *Tan Song Gou & Ors.* [1981] 2 M.L.J. 317.

CIVIL APPEAL.

Matthew Varughese for the appellant/defendant.

Tan Hock Kim for the respondent/plaintiff.

Cur. Adv. Vult.

Shankar J: On April 24, 1978 one Cheah Soi Moi (hereafter referred to as the deceased) was involved in a fatal accident. The motorcycle which he was riding was knocked into by a motorcar and he was killed.

On July 17, 1979 M/s Tan and Tan acting for the mother of the deceased filed an action in the Sessions Court on behalf of the mother of the deceased. She sued the car driver as an administratrix of the deceased's estate and on her own behalf as a dependant for damages under sections 7 and 8 of the Civil Law Act 1956.

The Summons was served on July 28, 1979. The case was first mentioned on August 16, 1979. By the second mention date on August 30, 1979 no defence had been filed and an Order was made precluding the defendant from defending the action.

Thereafter the case was fixed for hearing to assess the damages to be paid.

However, the case was not proceeded with on October 4, 1979 because plaintiff had gone to Canada. It was adjourned to February 7, 1980. On that day Mr. Matthew Varughese appeared for the defendant.

The case was postponed to February 28, 1980 and thereafter there were 6 further postponements before the trial actually began on November 6, 1980, with Mr. Tan Hock Kim as plaintiff's counsel.

In the interim, on or about March 11, 1980, plaintiff's solicitors made their first amendment to the Statement of Claim. The funeral expenses were increased from $1,000/- to $2,545.25.

On July 20, 1980, a second amendment was made. This time the name of the deceased's father was struck out from the Statement of Claim as

being one of the dependants for the purposes of the claim under section 7 of the Civil Law Act 1956.

About this time it seems that solicitors representing the parties had some discussion about a proposed Agreed Bundle of Documents which was to be used at the trial.

On July 16, 1980, plaintiff's solicitors Tan and Tan sent a letter to the defendant's solicitors Varughese & Co. A conversation was referred to on July 15, 1980 regarding an Agreed Bundle of Documents and a reference was made to a stack of documents handed to the defendant's solicitors on June 26, 1980 seeking the agreement of the defendant's solicitors for their inclusion in the Agreed Bundle. This letter was tendered in evidence in the court below and marked Exhibit P9.

A reply was sent by the defendant's solicitors dated July 23, 1980. The letter stated:

"We have no objection to the inclusion of the documents mentioned in paragraph 2 of your letter of the 16th instant".

But the letter also contained an offer to agree the funeral expenses at a sum stated. Most importantly the letter was marked "Without Prejudice".

The subsequent history of this matter quite clearly suggests that the parties did not put up an Agreed Bundle of Documents nor was there any agreement as to the funeral expenses or for that matter any other damage, general or special, claimed by the plaintiff. So when the trial began on November 6, 1980 the entire question of the damages to which the plaintiff was entitled was wide open.

The hearing was continued on November 15, 1980. There were a number of postponements after that and further hearing took place on June 9, 1981. On that day the plaintiff's counsel closed his case.

The parties put in written submissions and judgment was delivered on November 12, 1981. The learned president granted $4,000/- by way of damages for loss of expectation of life of which $2,000/- went to the deceased's father and the remainder merged with the dependency claim of the mother. She was awarded $3,800/- under this head from the date of the accident to the date of judgment, future dependency of $7,920/- and special damages of $2,780/- which included funeral expenses of $2,000/- $400/- for repairs to the motorcycle, and $380/- for administrative and other expenses.

It is against this award that the defendant now appeals.

Quite simply the defendant's counsel argues that the plaintiff simply did not prove her case. He relies on the well known case of *Devaki Nair* v. *Sum Kum*[1]. In that case Thomson L.P. quoted with approval a statement by Lord Goddard in *Bonham Carter* v. *Hyde Park Ltd.* The head note summarizes the *ratio decidendi* as follows:-

"In an action for damages it is for the plaintiff to prove his damages, it is not enough to write down the particulars and "throw them at the head of the court saying – "This is what I have lost; I ask you to give me these damages" '. He has to prove it."

The same decision had earlier been referred to by Thomson C.J. (as he then was) in *Lee Sau Kong* v. *Leow Cheng Chiang*[2].

Whether by misunderstanding, or by accident, or design, the manner in which plaintiff's counsel went about proving his case, fell far short of what the law required.

When the trial began on November 6, 1980 plaintiff's counsel called the plaintiff as his first witness. In her examination-in-chief he tendered through her 14 receipts in Chinese for the deceased's funeral expenses amounting to $2,545.25. 14 translations into English of these documents were also tendered. The learned President promptly marked them exhibits P1 A-N and P1 AT-NT.

The plaintiff said in her examination-in-chief that this was the amount incurred for funeral expenses.

Then she proceeded to state that the deceased's motorcycle after the accident was sent for repairs. She tendered a cash sale bill and a receipt for the payment of the repairs. These were marked P3 A-B. Various other documents were produced for fees paid for police reports, etc. and the letter from the deceased's employers together with a translation. This letter was marked PG and the translations P8T. Then the plaintiff proceeded to give evidence that the deceased contributed $200/- per month to her and spoke about his hobbies and so on.

In cross-examination Mr. Varughese established that she had not taken the motorcycle for repairs. Someone else had and he had paid the bills. She could not comment on the repairs or the figures nor did she know the extent of the damage sustained by the motorcycle.

The case was then adjourned to November 15, 1980. On that date, defence counsel informed the court immediately after the plaintiff had been re-affirmed for cross-examination that he was objecting to the receipts being produced through the plaintiff. Mr. Tan stated that he was calling the maker of the receipts. Mr. Varughese responded that the receipts should be tendered through the maker. Mr. Tan said that defendant's counsel could cross-examine the maker of the receipts. Mr. Varughese said that he had strict instructions to object to the production not only of the receipt for the repairs to the motorcycle but also the receipts for the funeral expenses and gave notice that the maker of these receipts should also be called as witnesses. Then Mr. Tan informed the court that sometime ago he had forwarded a set of receipts to the defence counsel and asked whether he had any objection, and defence counsel told him verbally that he had no objection. Mr. Varughese denied that, Mr. Tan accused him of a breach of undertaking and then proceeded to tender the 2 letters earlier referred to as Exhibits P9 and P10, Mr. Varughese stated that the only agreement on his part was to have the documents included in an Agreed Bundle but that he had not admitted the receipts themselves and consequently there was no breach of undertaking.

He then informed the court that since the receipts had been tendered by the plaintiff who was not their maker, their admission would be unlawful without the maker being called. Mr. Tan then stated that he had no intention of calling the makers as this was not required under the law.

The learned President had already admitted the documents and marked them as and when they were tendered by the plaintiff in her examination-in-chief plus the 2 letters tendered by plaintiff's counsel. He ordered the case to proceed.

In the result the situation was that the plaintiff and her counsel had submitted a number of receipts all of which were marked as exhibits. But there was no evidence whatsoever that it was the plaintiff who had paid the monies referred to in the receipts. Nor was there any evidence from the makers of the documents that they had received the monies. The receipts were left to prove themselves.

I have carefully looked at each one of the receipts P1 A-N and P1 AT-NT. It is observed that all of them are for cash payments except PIE, F, J, K and L. The names of the payers are given in these documents but none of them were called.

In his judgment the learned President stated it of his own knowledge that Chinese funerals were expensive and that $1,000/– for a coffin and further $1,000/– for funeral expenses was fair and reasonable and proceeded to award $2,000/– for this item. He did not address his mind to the issue as to whether these expenses had been proved.

In this case the learned President imported into the case his own knowledge of particular facts relating to the cost of a Chinese funeral and a coffin. He could not without giving evidence himself as a witness have brought such knowledge into the case and what was done was not permissible under the law. See *Low Moh* v. *Public Prosecutor*[3]

Sections 56 and 57 of the Evidence Ordinance lay down what a court can take judicial notice of. Everything else must be proved.

Section 58 of the Evidence Ordinance which only applies to civil cases, provides that no fact need be proved in proceedings which the parties have agreed to admit at the hearing or which before the hearing they agreed to admit by any writing under their hands or by any rule of pleading in force which they are deemed to have admitted.

On appeal Mr. Varughese submitted that the issue was not whether $2,000/– was fair but whether these special damages had been properly proved. Mr. Tan in his response to this stated that since Mr. Varughese did not object to the admissibility of the receipts when they were tendered and marked as exhibits the defence had waived its right to object to the admissibility of the documents at a later stage.

Some attempt was also made to submit that there had been an agreement between him and the defence counsel that the documents were to be put in without formal proof by calling the maker.

He then proceeded to submit that a receipt is a special category of document where the maker does not have to be called. A receipt can be proved, he said, by any person tendering the document as evidence that the payment had been made. As authority for this proposition he relied upon a passage appearing in *Sarkar* on Evidence 12th Edition page 763 where it is stated that explanation 3 and illustration (e) of section 91 of the Indian Evidence Act permits oral evidence merely of the fact that payment was made, but production of the document is required to prove the terms on which payment was made. He also relied on a passage appearing in *Field's* Oral and Documentary Evidence (1980) page 1974 where it is stated that written receipts for payments are important but by no means necessary as proof nor are they of the nature of primary evidence, the loss of which must be shown in order to let in secondary evidence.

I have considered these submissions with some concern because they appeared to show an inadequate grasp of matters which may be thought somewhat elementary.

In the first place it is the duty of counsel engaged in a case to see that the documentary evidence upon which he relies is properly tendered in court and proved. After they have been proved he should also see that when admitted into evidence the documents are properly marked as required by law. Reference may be made in this connection to *Immam-Ud-Din* v. *Sri Ram Perbhu Dial*[4].

A document does not become admissible in evidence merely because it has been handed to the adjudicating officer and marked as exhibit. See in this connection *Secretary of State* v. *Sarla Devi*,[5] *Feroze Din* v. *Nawab Khan*[6] and *Baldeo Sahai* v. *Ram Chander & Ors.*[7]. Whilst these Indian authorities are only of persuasive value, the propositions which they set out are really elementary. When the hearing began in this case the old Subordinate Court Rules 1950 were in force. By the second hearing the Subordinate Court (Amendment) Rules 1980 had already come into force (vide PU(s) 106/81 on April 1, 1981) but the relevant Order 19 r.8 and the new Order 28 Rule 14 (which has its equivalent in the Rules of the High Court Order 35 Rule 8) were all to the same effect. Documents put in evidence were to be marked as exhibits and retained by the court. But what has not been specifically stated and should be understood by all concerned is that a document cannot be admitted into evidence and marked as such until it has been properly proved.

I am afraid that the authorities cited by Mr. Tan did not support the proposition he advances. A receipt is a document like any other and if it is to be proved as a document such proof must be given by its maker. The effect of section 91 Explanation 3 illustration (E) of the Evidence Act is merely that written receipts for payment are by no means necessary as proof nor are they of the nature of primary evidence and proof of the fact of payment may be made by any person who witnessed it. See *Best* on Evidence 2nd Edition page 282 cited in ILR 9 Allahabad 351 at page 356. See also the judgment of Eusoffe Abdoolcader, F.J. in *Dato' Mokhtar Hashim & Anor.* v. *Public Prosecutor*[8].

In this case none of the receipts which the plaintiff tendered were properly proved. The plaintiff did not give evidence that she paid these monies, she did not witness payment of the monies, she did not call the people who had paid the monies, and she did not call the people who had received these monies.

The next point which Mr. Tan raised was that by failing to object to the receipts as and when they were put in during the examination in chief of the plaintiff, the defendants had waived their right to object to the admissibility of the documents. Mr. Tan cited no authority for such a sweeping proposition and I am afraid that once again the court must find against him.

In the first instance during an examination-in-chief the onus is upon the person who tenders the document to ensure that it is properly proved. Of course it is open to the defence then and there to object to the admissibility of the document if the grounds for such objection are apparent at that stage. But it may often happen that the grounds upon which a document is inadmissible may only surface during cross-examination of a particular witness or perhaps even at a later stage during the trial. It is not possible here to lay down hard and fast rules to cover every situation. Suffice it to say that provided an objection to the admissibility of a document is taken at the earliest practical stage in the course of a trial, and there are good grounds to support such an objection, the court will obliged to consider the objection on its merits and to rule thereon. Of course if no objection is taken at all during the trial, and objection is taken for the first time in an appeal,

it may well be too late. See in this connection the judgment of the Privy Council in *Shahzadi Begam* v. *Secretary of State for India*[9]. Also *Mt. Channi Bibi* v. *Ahmad Khan*[10] and *Jawala Singh* v. *Teja Singh*[11]. Also *Ghulam Muhammad* v. *Kulim Ullah*[12].

In the result I hold that by not objecting to the admissibility of the documents when they were tendered in examination-in-chief but only during cross-examination, there was no waiver on the facts of this case especially as it had only become apparent during the cross-examination that the plaintiff had no first-hand knowledge of the contents of these documents. See *Tay Kheng Hong* v. *Heap Moh*[13].

In the result it is not necessary for this court to embark upon a further inquiry on whether some of these expenses were properly incurred. At this juncture it is convenient also to dispose of the claims made in respect of the repair of the motorcycle. Once again receipts were put in by the plaintiff of matters upon which she obviously had no personal knowledge. The man who effected the payment was not called. But a bill collector was called from the repair firm. He testified that $653.40 had been paid to his company. However, he stated in cross-examination that he knew nothing about the repair work and once again the plaintiff's case fell short of proof that these repairs were necessitated by the accident. An essential link in the chain of the plaintiff's case was accordingly, plainly, missing. See *Fazal Din* v. *Public Prosecutor*[14].

I must therefore hold that in this case the plaintiff had not proved these two items of special damage and I would accordingly disallow the same. I do so with the utmost regret because it is apparent that a little care in the preparation of the case for the plaintiff could easily have overcome this problem and plaintiff's counsel obviously took too much for granted.

It was stated in submissions that some misunderstanding could have arisen as a result of the conflicting decisions on the effect of an Agreed Bundle of Documents. Reference was made to the cases of *Henry Trading Co. Ltd.* v. *Harun*[15] where Wan Suleiman, J. held that where there is an Agreed Bundle of Documents it is not necessary to prove those documents, *Yap Choo Hoo* v. *Tahir bin Yassin*[16] where Sharma, J. is said to have held that a document even when forming part of the Agreed Bundle of Documents has got to be proved, although it need not be formally and strictly proved, and *Goh Ya Tian* v. *Tan Dong Gou & Ors.*[17], a Singapore decision where Lai Kew Chai, J. held that the documents in an Agreed Bundle were admitted into evidence by consent without production of the maker or the originals and the contents formed part of the evidence before the court.

The issue here appears to relate to the question as to whether agreeing a document merely dispenses with proof of its existence or execution, or whether it goes further and dispenses with proof of the contents of the documents. The strictures passed by the judge in the last of the aforementioned judgments on Sharma, J. make somewhat sad reading. Certainly the law must be that once a document is included in an Agreed Bundle, it is no longer necessary to prove their existence or execution. Nor is it necessary to produce the original. But so far as the contents of the documents are concerned the truth of the same has still to be proved, in the absence of any specific admission of the facts therein contained. That this is so may readily be appreciated when one considers 2 police reports in an Agreed Bundle each giving a diametrically opposite version of how an accident took place. The version of the accident is generally not agreed and in issue. To that extent the makers of the document may be subject to cross-examination to establish where the truth of the matter lies. So whilst it is not necessary to prove the documents, it would still be necessary to prove the truth of the contents of the documents.

Even where an Agreed Bundle is filed it will be noted that "in default of a special agreement, only such letters in the bundle as are actually read at the trial will be taken to be in evidence, and agreeing a bundle does not constitute an admission that all the letters contained in it are admissible in evidence." (See *Odgers* on Pleading & Practice 20th Edition page 298.)

This particular point seems to have caused a great deal of trouble to practitioners. It may be useful therefore to include in his judgment a reference to the various *Practice Notes* which have from time to time been issued by the Registrar of the High Court in Malaya. *Practice Note No. 1 of 1969* provided for an Agreed Bundle of Documents and an agreed Statement of Facts to be filed in running down cases and listed the minimal requirements of each. After the Rules of the Supreme Court 1957 came into force another *Practice*

Note No. 3 of 1970 was issued requiring an Agreed Bundle of Documents and a statement of agreed facts to be filed. This particular *Practice Note* referred to RSC Order 32 and qualified the decision of Sharma J. earlier referred to. It would appear to bear emphasis that this particular *Practice Note* also seems to have been made applicable to the Sessions Court and since it does not appear to have been repealed it applied to the conduct of the present action. An amendment to *Practice Note 3 of 1970* was made by *Practice Note 1 of 1977*. In addition to an Agreed Bundle of Documents a bundle of documents not agreed was also required to be filed.

Then followed *Practice Note 2 of 1977* issued on February 8, 1977. Detailed instructions were given in this note with close reference to Order 30 Rule 1, Order 31 Rule 13, and Rules 1, 2, 4, 8 and 11.

To clarify the position the note expressly states:–

"It will make for willing compliance if solicitors and counsel consider or realise that agreeing on documents implies merely dispensation with proof of their existence or execution and does not dispense with proof of the averments or allegations therein, unless agreed to on the pleadings or in other admissions."

A further *Practice Note 4 of 1977* was also issued which appears to have done away with the necessity of filing a bundle of documents not agreed.

All these practice notes designed to protect counsel in the preparation of cases and to save time and expense of all concerned, have over the years undoubtedly been honoured more in their breach rather in their observance.

The instant case is an example of the confusion that can arise when the rules are not followed.

If Mr. Tan was under some misunderstanding as to what Mr. Varughese was agreeing to and thought that he could tender all the receipts without any proof either of the making of them or its contents, his conduct of the action does not appear to sustain this view. In the court below, he did not tender the documents as agreed documents at the commencement of the trial. There was no agreed Bundle. What he did was to tender the documents through a plaintiff who did not make them, and who did not give any evidence that she had witnessed the transactions referred to in them. When challenged to prove the documents he alleged in the first instance that the documents had been agreed. When this was denied by Defence Counsel, Mr. Tan informed the court he had no intention of calling the makers of the receipts because he was not required to do under the law.

Although the case was adjourned thereafter and some months had elapsed before continued hearing, Mr. Tan maintained his position. In the result all the receipts remained unproved.

Apart from this solitary aberration, I was most impressed with the thoroughness and tenacity with which Mr. Tan urged upon me everything that could possibly be paid for his client.

It is therefore a matter of regret that I have felt compelled to hold as I have done. To some extent Mr. Tan's misconception about the requirements of the Evidence Ordinance may have been compounded by the emotional strain which was precipitated by what he thought was an unjustified reversal of the Defence Counsel's position. But the man who loses his temper loses himself, and the Rules of Practice and Procedure are not just intended as a cure for insomnia. Their cold blooded application in this case, as in any other, would surely have protected counsel from the pitfalls in which he now finds himself.

I now turn to the claim for general damages. The Appellant did not contest the award of $4,000/– for loss of expectation of life. Accordingly this will stand and $2,000/– of this sum will be paid to the father of the deceased.

But the amount awarded by way of damages for loss of dependency was strenuously contested and we must now turn out attention to this aspect of the case. The evidence discloses that the deceased's father was a wealthy man. He had 2 wives and many children. He appears to have supported the deceased's mother in some comfort.

The deceased himself was 33 years at the time of his death. It was stated by the plaintiff that the deceased had been working as a technician in the JKR for about 10 years. A letter, Exhibit PS, with its translation PST was produced to show the salary structure of the deceased.

Defence counsel did not challenge this letter but did point out an anomaly. The salary scale was $295 x 25-345/395 x 25-645 x 30-705/765 x

40-925. The plaintiff made no attempt to explain how it came about that if the deceased had been working for 10 years his salary was still $295 which was the starting salary on that scale.

It is observed from the Grant of Letters of Administration that the deceased left a house in Kota Tinggi worth $7,000/–, cash in a savings bank of $3,885.10 and he also owned his motorcycle JN 907. He had a life insurance policy for $19,561.35. His place of work was in Johore Bahru.

The plaintiff's contention was that out of the salary of $295/– per month the deceased gave her $200/–.

The Appellant pointed out that the deceased would have incurred the following outgoing expenses in the course of his normal life namely:-

i) savings
ii) life insurance premiums
iii) money expended on purchase of motorcycle
iv) road tax and insurance for motorcycle
v) travelling expenses from Johore to Kota Tinggi and back
vi) food whilst he was in Johore since the evidence was that he stayed on alternate days in Johor Bahru
vii) cigarettes which it was proved he smoked
viii) movies and entertainment.

Taking minimum figures for each of these items the Appellant's counsel argued with considerable force that the deceased would have spent at least about $250/– upon himself if not somewhere more. Whereas the deceased's mother states that the deceased gave her $200/– per month.

For reasons which are not stated the learned President in his judgment took a figure of $100/– per month by way of the value of the dependency because he thought that this figure was fair.

The Appellant's counsel argues that this is not the correct approach and states that a critical examination was required to see what figure the Plaintiff had proved to be her actual loss.

Taking the items already mentioned and other items which the deceased would have required for his personal upkeep it is the contention of the Appellant that at best the deceased would only have contributed about $20 to $30 per month to his mother if that.

He further states that since the deceased was a bachelor aged 33 the prospect of marriage was very much on the cards and only 5 years purchase should have been given instead of 17 years taken by the learned President with a reduction of a third of this figure for contingencies.

It is not possible in case of this kind to award general damages with mathematical accuracy. The court can only do the best it can in all the circumstances taking a broad commonsense approach.

I am inevitably impelled towards the view that the Plaintiff has exaggerated the value of the monthly contribution of the deceased beyond the bounds of credulity and I cannot accept that he contributed $200/– per month as alleged. On the other hand, I am not prepared to hold that he contributed nothing. The $100/– taken by the learned President does appear in all the circumstances of this case to be a little on the high side.

I would take the dependency loss to be $75/– per month because on the balance of probabilities one cannot see how the deceased could have contributed any more than this sum.

As for the number of years purchase it is observed that the learned President took 17 years life expectancy and reduced this figure by a third for contingencies bringing the figure down to 11 years and 3 months.

This figure would have been unobjectionable if everything else was equal. But this deceased was a bachelor of 33, and to all accounts quite eligible. I hold therefore that the prospect of this getting married was so much on the cards that the very maximum allowance that one could have made for the continuation of support was 7 years and that is the figure I choose.

On the actuarial tables the value of this dependency for 7 years at $75/– per month would be $5,207.72. And this is the sum awarded for general damages for loss of dependency.

There will therefore be judgment for the Plaintiff for $9,601.72 being $394/– for special damages, $4,000/– for loss of expectation of life of which $2,000/– will be paid to the deceased's father, and a sum of $5,207.72 by way of general damages for loss of dependency.

In view of the relatively small award and all the other circumstances of the case no deduction has

been made for accelerated succession to the assets of the deceased.

The Appellant will have the costs of this appeal.

Order accordingly.

Solicitors: *Varughese & Co., Tan & Tan.*

WAN ABDUL RASHID v. S. SIVASUBRAMANIAN

[O.C.J. (Vohrah J.) March 8, 1984]
[Kuantan – Civil Suit No. 91 of 1979]

Tort – Defamation – Imputation of corruption against Registrar of Sessions Court – Whether words complained of were in fact uttered by defendant and communicated to third party

Legal Profession – Defamation – Imputation of corruption against Registrar of Sessions Court – Wrongful act to be strongly deprecated – Damages of $5,000 awarded.

The plaintiff in this case was the Registrar of the Sessions Court in Kuantan whilst the defendant was an advocate and solicitor practising in the same town. The plaintiff alleged that the defendant defamed him on February 1979 at about 11.00 a.m. at the Kuantan Sessions Court Registry in the presence of members of the Court staff and of the public by branding him as a corrupt person when he was alleged to have said:

"Oh, that corrupted fellow, he needs to be taught a lesson ... I am going to get the BSN and then he would know ... I am going to get the whole lot of you fellows because you fellows are nothing but corrupted buggers right from the Registrar".

The issue before the court was whether the words complained of were in fact uttered by the defendant and if they were, whether they were communicated to third persons.

Held: (1) on the evidence presented, there was publication by the defendant of the words attributed to him or of words to similar effect;

(2) the plaintiff as the Registrar of the Sessions Court holds an office of trust in which the public must have confidence as to his integrity and probity if the judicial system is to function properly. To impute corruption against any officer of the Court without evidence to support it is a wrongful act which should be strongly deprecated;

(3) the plaintiff as a government servant drawing a regular salary should not benefit financially from these proceedings but is entitled to be vindicated in the eyes of the public and consoled for the wrong done to him. Having regard to all the circumstances of the case, a sum of $5,000 would be a fair and adequate sum to be awarded as damages to the plaintiff.

Cases referred to:

(1) *John Tan Chor-Yong* v. *Lee Chay Tian* [1971] 1 M.L.J. 240;
(2) *Hasnul bin Abdul Hadi* v. *Bulat bin Mohamed & Anor.* [1978] 1 M.L.J. 75.
(3) *John Lee & Anor.* v. *Henry Wong Jan Fook* [1981] 1 M.L.J. 108.
(4) *C.S. Wu* v. *Wang Look Fung & Ors.* [1981] 1 M.L.J. 178.

CIVIL SUIT.

Joseph Au Kong Weng for the plaintiff.
Raja Abdul Aziz Addruse for the defendant.

Cur. Adv. Vult.

Vohrah J.: The plaintiff (P.W.1) is the Registrar of the Sessions Court in Kuantan whilst the defendant (D.W.1) is an Advocate & Solicitor practising in the same town. The plaintiff alleges that the defendant defamed him on February 20, 1979 at about 11.00 a.m. at the Kuantan Sessions Court Registry in the presence of members of the Court staff and of the public by branding him as a corrupt person when he is alleged to have said:

"Oh, that corrupted fellow, he needs to be taught a lesson... I am going to get the BSN and then he would know ... I am going to get the whole lot of you fellows because you fellows are nothing but corrupted buggers right from the Registrar."

It has been conceded by the defence that these words are by their very nature defamatory. There is also no dispute that if the words were uttered they refer to the plaintiff. The defence however denies that these words were ever spoken or published by the defendant. What I have to decide is whether the words complained of were in fact uttered by the defendant and if they were, whether they were communicated to third persons.

The plaintiff has relied on several witnesses to establish his case. As one M. Rajalingam (P.W.3) appears to have been the initiator of the proceedings which have been unfolded in Court I shall deal with his evidence first.

Rajalingam testified that he was then the Tamil interpreter at the Kuantan Sessions Court and on the day and at the time in question he was working at his desk in the registry when he noticed the defendant at the counter. The defendant called out to him by name whereupon he left his seat and approached the counter. The defendant then told him that interpreters were approving draft orders and that he had not seen such draft orders